

48A C.J.S. Judges § 322

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

D. Objections to Judge and Proceedings Thereon

2. Mode and Sufficiency of Raising Objection

b. Affidavit of Bias or Prejudice

§ 322. Source of allegations

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(3)

Generally, allegations based on opinion, hearsay, or rumor are insufficient; jurisdictions are divided on the sufficiency of an affidavit of bias or prejudice made on information and belief.

An affidavit of bias or prejudice may not be premised on inference, speculation or conjecture,¹ or subjective belief or feelings.² Ordinarily, where such an affidavit contains allegations based on opinion, hearsay, or rumor, it is insufficient.³ However, it has been stated that reliance on simple hearsay may be permissible in order that the court may determine if the fear of bias is founded on reason.⁴

On information and belief.

Under some statutes, an affidavit alleging bias cannot be made on information and belief.⁵ The affidavit must be direct and certain in order that, if it is false, it will subject the party making it to criminal prosecution.⁶ Under other statutes, it may be made on information and belief.⁷ If an affidavit on information and belief is permissible, the source of the information should be set forth.⁸ An affidavit supporting defendant's affidavit of prejudice may be made on information and belief.⁹

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Footnotes

- 1

U.S.—*U.S. v. Cherry*, 330 F.3d 658 (4th Cir. 2003).

Miss.—*Farmer v. State*, 770 So. 2d 953 (Miss. 2000).

Mere speculation insufficient

U.S.—*Klayman v. Judicial Watch, Inc.*, 744 F. Supp. 2d 264 (D.D.C. 2010).

Vague, unverified opinions, speculations, and conjectures

Conn.—*In re Jason M.*, 140 Conn. App. 708, 59 A.3d 902 (2013), certification denied, 308 Conn. 931, 64 A.3d 330 (2013).

Unsupported, irrational, or highly tenuous speculation

U.S.—*In re Medtronic, Inc. Sprint Fidelis Leads Products Liability Litigation*, 601 F. Supp. 2d 1120 (D. Minn. 2009), *aff'd*, 623 F.3d 1200 (8th Cir. 2010).
- 2

U.S.—*U.S. v. Corr*, 434 F. Supp. 408 (S.D. N.Y. 1977).

Colo.—*Edmond v. City of Colorado Springs*, 226 P.3d 1248 (Colo. App. 2010).

Subjective fears, unsupported accusations, or unfounded surmise

U.S.—*U.S. v. De Castro-Font*, 587 F. Supp. 2d 353 (D.P.R. 2008).
- 3

U.S.—*U.S. v. Roebuck*, 271 F. Supp. 2d 712 (D.V.I. 2003).

Colo.—*Carr v. Barnes*, 196 Colo. 70, 580 P.2d 803 (1978).

D.C.—*Anderson v. U.S.*, 754 A.2d 920 (D.C. 2000).

Expert's affidavit based on hearsay documents insufficient

Mass.—*Demoulas v. Demoulas*, 432 Mass. 43, 732 N.E.2d 875, 41 U.C.C. Rep. Serv. 2d 1224 (2000).

Rumors and gossip insufficient

U.S.—*Klayman v. Judicial Watch, Inc.*, 744 F. Supp. 2d 264 (D.D.C. 2010).

Fla.—*Polanco v. State*, 993 So. 2d 566 (Fla. 4th DCA 2008).
- 4

U.S.—*U.S. v. Civella*, 416 F. Supp. 676 (W.D. Mo. 1975).
- 5

Fla.—*Raybon v. Burnette*, 135 So. 2d 228 (Fla. 2d DCA 1961).

Ky.—*Combs v. Brock*, 240 Ky. 269, 42 S.W.2d 323 (1931).

Or.—*State Capitol Reconstruction Commission v. McMahan*, 160 Or. 83, 83 P.2d 482 (1938).
- 6

Ky.—*Roberts v. Sturgill*, 257 Ky. 194, 77 S.W.2d 789 (1934).

Personal belief must be affirmed

Ariz.—*Liston v. Butler*, 4 Ariz. App. 460, 421 P.2d 542 (1966).
- 7

U.S.—*Korer v. Hoffman*, 212 F.2d 211, 45 A.L.R.2d 930 (7th Cir. 1954); *Klayman v. Judicial Watch, Inc.*, 744 F. Supp. 2d 264 (D.D.C. 2010).
- 8

Cal.—*Blackman v. MacCoy*, 169 Cal. App. 2d 873, 338 P.2d 234 (2d Dist. 1959).
- 9

Mo.—*State v. Irvine*, 335 Mo. 261, 72 S.W.2d 96, 93 A.L.R. 232 (1934).

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